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IN THE PATENT AND TM OFFICE

Appn. Number: 09/396,128

Art Unit: 3637 OFFICE OF PETITIONS

Filing Date: 09/14/99

Applicant: Thompson, Thomas C.

Appn. Title: Hurricane-Earthquake Frieze Plate

Examiner: Tran, Hanh V.

Mailed: November 22, 2004

**Renewed Petition under 37 CFR 1.137(b)**

Mail Stop PETITION

Commissioner for Patents

Box 1450

Alexandria, VA 22313-1450

Attn: E. Shirene Willis

Dear Ms. Willis:

In response to the petition decision mailed 09/22/04, I have included in this response the following:

1. A check for \$114 to revive under 37 CFR 1.137(b).
2. Response to dismissal of petition.
3. Request of refund of abandonment fee and excess claim fee.

11/30/2004 HDEMESS1 00000071 09396128

01 FC:2452 55.00 OP  
02 FC:1999 59.00 OP  
03/09/2005 RHELLEY 00000004 09396128  
01 FC:1999 55.00

Very respectfully,

*Thomas C. Thompson*  
Thomas C. Thompson

**Certificate of mailing:**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on NOV 22, 2004  
(Date)

Printed name of person signing this certificate: Thomas C. Thompson

Signature: *Thomas C. Thompson*

03/09/2005 RHELLEY 00000004 09396128  
01 FC:1999 55.00

1. **The \$114 fee was and is properly required. This is the required reply in any future petition to revive.** The applicant is enclosing a check for \$114. This payment is to revive the application. It does not indicate by the applicant that there were any excess claims. The applicant still adheres to: 1. that examiner Tran's summary sheet, included in the 06/26/02 Office Action, clearly states that 20 claims are pending; 2. that examiner Tran asked the applicant if claims 1-19 should be canceled; and 3. that the applicant agreed to the examiner's renumbering action in two place in the response.
2. **The petition under 37FR 1.137(b) is dismissed.** The applicant does not understand how the Senior Petitions Attorney can side with a clerk's interpretation of the number of claims pending, when the examiner has stated in the 06/26/02 office action (on the summary sheet) that claims 12-31 (20) claims are pending. The examiner also asked if the applicant's intent was to cancel old claims 1-19, that new claims 12-31 were being renumbered as 20-39, and asked for clarification. Examiner Tran had already performed the correct action in the office action and asked the applicant to affirm this action. The pro se applicant, having a good working relationship with the examiner, affirmed the examiner's action in the 10/26/02 response. Once on the cover page, and again in the text.
3. **Petitioner is reminded that Examiner Tran did not cancel claims 1-19 in the June 26,2002 non-final Office action.** The applicant is not sure what rule 126 is, but it appears that Examiner Tran did cancel claims 1-19 and the applicant agreed to it. As examiner Tran states: "It appears that applicant's intent is to cancel claims 1-19 and then add new claims 12-31. Therefore, for the purpose of this examination, new claims 12-31 have been renumbered under rule 126 as: 20-39 respectively. Clarification is required." It appeared to the applicant that the examiner was canceling claims 1-19 so that the 20 new claims, 12-31, could be renumbered as claims 20-39. It also appeared to the applicant that the examiner was asking if the applicant agreed to these changes. In the applicant's response, the applicant agreed to the examiner's renumbering action. Twice. Since the applicant agreed in writing, that should be clarification that only 20 claims were pending.

4. **The June 26, 2002 non-final Office action clearly states that Claims 12-31 are pending.** Eureka. It appears that the Senior Petitions Attorney agrees with examiner's Tran's statements that claims 12-31 are pending. Therefore, the applicant is vindicated since claims 12-31 is 20 claims. The examiner's renumbering of these 20 pending claims to 20-39 is what confused the clerk.
5. **Petitioner never requested that Examiner Tran cancel claims 12-19.** As stated earlier, the examiner asked for clarification on canceling claims 1-19 so as to renumber claims 12-31 as 20-39. The examiner had already renumbered the 20 claims as 20-39 under rule 126, and the applicant agreed to this action. Since the examiner recommended canceling claims 1-19, and the applicant agreed to the examiner's renumbering of the 20 pending claims to claims 20-39, claims 1-19 were no recognized by the applicant as being canceled.
6. **Petitioner did not include parenthetical expression following the claim number indicating the status of the claim in the November 4, 2002 (certificate of mailing date October 26, 2002) amendment.** The revised amendment practice had an effective date of July 30,2003, well after the amendment was sent in.
7. **Petitioner did include a marked up version of claims 12-19. 37 CFR 1.121(c)(1)(ii) states that a marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.** Before the July 30,2003 revised amendment, 37 CFR 1.121 required a clean and marked up copy. The applicant correctly provided a marked up copy of the 20 pending claims 12-31. All of the examiner's remarks were answered and corrections shown on the marked up copy. The applicant's clean copy showed the examiner's new renumbering of the 20 pending claims to 20-39. Since the applicant had agreed to the examiner's canceling of claims 1-19, the canceled claims were correctly not shown in the marked up or clean copy of pending claims.

8. **In short, petitioner did not follow claim amendment rules.** The applicant correctly followed all claim amendment rules in effect in 2002.
9. **Regarding petitioner's request for a refund of the petition fee, the payment of the petition fee is a prerequisite to the filing of a petition to revive under 37 CFR 1.137(b). This requirement cannot be waived. MPEP 711.03(c)(III)(B).** In this response, the applicant has shown the following: 1. The examiner stated in the Office Action that 20 claims (claims 12-31) were pending. 2. The examiner canceled claims 1-19, and renumbered claims 12-31 to claims 20-39 and asked the applicant for clarification. 3. The applicant approved the examiner's renumbering action. 4. The Senior Petitions Attorney's admission of "The June 26, 2002 non-final Office action clearly states that Claims 12-31 are pending" showing that 20 claims were pending. 5. That the applicant followed all claim amendment rules that were in effect in 2002. 6. That deleted claims 1-19 were correctly not shown in the marked up or clean copy of the amended claims.
10. The applicant has now shown that the applicant, examiner, and Senior Petitions Attorney had all recognized twenty claims, claims 12-31, or renumbered claims 20-39 as pending. Therefore, no excess claim fees were due, the original response should have been entered, and the application should not have been abandoned. The applicant respectfully requests that the petition fee, \$665, and the excess claims fee, \$114 be refunded. If this is not feasible, the applicant will be filing a protest to the Commissioner.

Very Respectfully,



Thomas Thompson

92-543 Kokole Pl.

**Petition Maintenance**

File Edit View Show

Application  
 Application No **09396128** Patent No  Clear

Title of Invention **HURRICANE-EARTHQUAKE FRIEZE PLATE**

Filing Date **09/14/1999** Issue Date

Inventor Name **THOMPSON, THOMAS**

Mailroom Date	Match	Initial Type	Decided Type	Decision	Decision Date
11/26/2004	N	502			
08/23/2004	Y	501	501	DISMISSED	09/22/2004
05/10/2004	Y	501	501	DISMISSED	07/14/2004
05/05/2004	Y	613	613	DENIED	06/02/2004
08/14/2003	Y	613	613	DISMISSED	04/27/2004

**Petition Detail**

Mailroom Date \* **082304** Decision **DISMISSED**

Cert. of Mail Date  Decision Date **09/22/2004** ☐ Next Business Day

Initial Petition Type \* **501** **TO REVIVE AN ABANDONED** Decided Petition Type **501** **TO REVIVE AN ABANDONED**

Initial Deciding \* **OFFICE OF PETITIONS** Final Deciding Office **OFFICE OF PETITIONS**

☒ Matched to Application Petitions Examiner **WILLIS, ELEANOR S**

☐ Reconsidered/Renewed

Add Update Delete Decision Reprint

Print current window. ckhlok

Shirent Pet. 1.137(b) filed 8/23/04  
 was never been in Palm even the  
 decision.

Thanks -  
 Dary.

## IN. SCREENING OF INCOMING PAPERS :KLIST

Reviewer: CRSDate: 12/2/04APPLICATION NO. 09/396128

1. PETITION TYPE	CODE	PETITION TYPE	CODE
<u>✓</u> R137(a) Petition-----	501 <i>renew</i>	R28c Petition-----	309
<u>✓</u> R137(a) Petition-----	509	R47 Petition-----	313
(Issue Fee/Dwgs)		R53 Petition(Lost App., postcard	
<u>✓</u> R137(b) Petition-----	502 <i>✓</i>	rec., inc. by ref., conversions,	
<u>✓</u> R137(b) Petition (IFEE/DWG)-----	510	misnum/mislabel. dwgs-----	408
R53(e) Filing Date-----	412	R10(d) Exp. Mail FD (USPS)-----	411
R137(f) Petition-----	536	R10(c/e) Exp. Mail FD-----	416
R183 Pet. (waive R67 sup. dec.)-516		R53 Pet. conv. to/from prov.---	527
R182 Petition--(inv. name chg., order		R78(a)(3)/(6)Petition-----	535
of inv., atty/assign. name chg., dup.		R55(c) Petition-----	535
let. pat.) -----	519	R55(a) Petition-----	507
R182 Petition - (omit.items		R183 Petition	
w/postcard) -----	520	(corr.data 85b/pat)-----	538
R183(susp./waive ex. rule, R59)---503		R314 Petition-----	508
R378(b/e) Petition-----	532	Pet. W/D Abn-----	525
R378(c) Petition-----	533	R705(b) PTA-Bef iss-----	550
R377 Petition-----	521	R705(d) PTA-Aft iss-----	551
R3.81(b) Petition-----	523	R705(c) Reinstate red. term.---	552
R181 Petition (rev. non-exam)---	515	R701 PTE -----	553
R181 Petition (rev.exam) -----	504	Other -----	

## 2. LIST PAPERS FILED WITH PETITIONS

<u>PreAmdt/Amdt</u>	<u>CPA</u>	<u>Associate POA</u>
<u>Filing Fees</u>	<u>RCE</u>	<u>Terminal Disclaimer</u>
<u>Reply/Arguments</u>	<u>IDS</u>	<u>Change of Address</u>
<u>Election</u>	<u>129(a) Submsn</u>	<u>Revocation/POA</u>
<u>Notice of Appeal</u>	<u>Issue Fee</u>	<u>Priority Documents</u>
<u>Brief (3)</u>	<u>Drawings</u>	<u>Request C of C</u>
<u>Reply Brief</u>	<u>Oath/Decl &amp; POA</u>	<u>Rule 312 Amdt</u>
<u>Declaration R132</u>	<u>Ext Time ( )</u>	<u>Statement 3.73b</u>

Other Papers \_\_\_\_\_

3. Is paper a petition to withdraw holding of abandonment: yes no  
 If so, send paper and/or file to appropriate location (*Note: remove any flag set first*):

- a. Nonreceipt of action from TC or assertion that reply was timely filed:  
 Send paper to TC \_\_\_\_\_
- b. Nonreceipt of Missing Parts Notice or assertion that reply was timely filed:  
 Send paper to -OIPE - CP2-5B26- - ATTN: Doshie Day
- c. Assertion of timely payment of issue fee and/or submission of drawings:  
 Send petition to Office of Publications: ATTN: Tom Hawkins
- d. Other \_\_\_\_\_

4. Other: \_\_\_\_\_  
 If not handled in Office of Petitions, send paper to appropriate location.

5. Is petition accompanied by assignment papers, fee address, or other paper which needs to be sent to another location? yes no If so, make copy of assignment papers, fee address, or other paper; mail original to proper location and place copy in file with an indication that the original paper(s) has been forwarded to the appropriate location (Assignment Branch; Maintenance Fee Division, etc.)

*4/100  
10/1/04  
who  
should  
assign  
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pat. to.*